



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

GEN-06-21
FP-06-17

Subject: The Third Higher Education Extension Act of 2006, Public Law 109-292

Summary: This letter discusses the extension of the HEA and changes made to the Title IV student loan programs and the Hispanic Serving Institutions grant program in Title V of the HEA as a result of that legislation.

References: Sections 435(d), 502(a) and (b), and 458(b) of the HEA

Dear Colleague:

On September 30, 2006, President Bush signed into law the Third Higher Education Extension Act (Pub.L.109-292). This Act extends the programs authorized by the Higher Education Act of 1965, as amended (HEA) until June 30, 2007, and makes changes to the student loan programs authorized by Title IV of the HEA and to the Hispanic Serving Institutions (HSI) Program under Title V of the HEA. These changes are discussed below.

TITLE IV LOAN PROGRAMS

Eligible Lender Trustee (ELT) Relationships Between Eligible Non-School FFELP Lenders and Eligible Institutions

Elimination of New ELT Relationships

Effective September 30, 2006, except as noted below, an eligible lender in the Federal Family Education Loan Program (FFELP) may not make or hold a FFELP loan as a trustee for an institution of higher education or for an organization affiliated with an institution of higher education. An "institution of higher education" is any institution that meets the definition of that term in §101 or §102 of the HEA. An affiliated organization is any organization that is directly or indirectly related or connected to the institution of higher education, and includes, but is not limited to, alumni organizations, athletic organizations, and social, academic, and professional organizations.

The prohibition on holding or making loans described above does not apply to an eligible lender that was serving as an ELT for an institution or affiliated organization on September 30, 2006. For the purposes of implementing this restriction, serving as an ELT means that:

1. A formal contract between the lender and institution or organization had been entered into by the lender and the institution or organization for this purpose before September 30, 2006, and continues in effect or has been or is renewed after that date; and
2. At least one loan was held in trust by the eligible lender trustee on behalf of the institution or the affiliated organization on September 30, 2006.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Restrictions on Existing ELT Relationships

Effective January 1, 2007, and for loans first disbursed on or after that date, any eligible lender, institution, or affiliated organization operating under a previously established ELT relationship that continues in effect, must comply with the requirements of section 435(d)(2) of the HEA that govern FFELP school lenders, as specified below:

The institution, whether directly involved in an ELT relationship or affiliated with an organization directly involved in an ELT relationship:

1. Must employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending the institution.
2. Must not be a home study school.
3. Must not have a cohort default rate greater than 10 percent.
4. May only make loans to students enrolled at the institution.
5. May make only Federal Stafford Loans to graduate or professional students.
6. Must make loans with an origination fee or interest rate, or both, that is lower than that provided under the HEA.
7. Must use any proceeds from interest payments from borrowers, interest subsidy payments, and special allowance payments on the loans made and held in trust, and any proceeds from the sale or other disposition of those loans for need-based grants if the institution receives these proceeds directly or indirectly.
8. Must ensure that the loans made or held by the eligible lender trustee for the institution are included in the required annual FFELP lender compliance audit.

An organization affiliated with the institution:

1. The affiliate of an institution must comply with all the requirements applicable to the institution as noted above except for requirements 1, 2, and 3.

The eligible lender:

1. The eligible lender acting as trustee must comply with all the requirements applicable to the institution as noted above except for requirements 1, 2, 3, and 7.

Cancellation of Student Loan Indebtedness for Survivors of Victims of the September 11, 2001 Terrorist Attacks

Subject to the development of implementing regulations, the new law authorizes additional loan discharge and cancellation benefits on the outstanding balance of certain Title IV loans (FFELP, Federal Direct Loans, and Federal Perkins Loans) for survivors of eligible public servants and other eligible victims of the September 11, 2001 terrorist attacks. These discharge and cancellation benefits are beyond the benefits currently available under the HEA.

The discharge or cancellation is available only for Title IV loans on which amounts were owed on September 11, 2001, and on which amounts are still owed on the day the discharge or cancellation is requested. No refunding of any payment made on the loan is authorized.

Benefits for spouses of eligible public servants

The spouse of an eligible public servant is eligible for a discharge or cancellation of his or her Title IV student loans, including any portion of a joint consolidation loan that was used to repay the spouse's eligible Title IV federal student loans.

For the purpose of these discharges and cancellations, an eligible public servant is defined, subject to regulations of the Secretary, as an individual who served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces who died or became (or becomes) totally and permanently disabled due to injuries suffered in the September 11, 2001 terrorist attacks.

Benefits for spouses and parents of other eligible victims (other than public servants)

For spouses of eligible victims who are not public servants, the new law mirrors existing law and regulations by providing for the discharge of the portion of a joint consolidation loan that was incurred on behalf of the eligible victim.

Current law and regulations provide for the discharge of a parent borrower's PLUS loan (or the portion of a consolidation loan that repaid a PLUS loan) in the event of the death of the dependent student on whose behalf the PLUS loan was obtained. The new law provides for this same benefit. Additionally, the new law provides for the discharge of a PLUS loan (or the portion of a consolidation loan that repaid a PLUS loan) obtained on behalf of a dependent student who became (or becomes) totally and permanently disabled as a result of the September 11, 2001 attacks.

For the purpose of these discharges and cancellations, an eligible victim is defined, subject to regulations of the Secretary, as an individual who died or became (or becomes) totally and permanently disabled due to injuries suffered in the terrorist attacks. An eligible parent is a parent who owes a parent PLUS loan incurred on behalf of an eligible victim, or who owes a consolidation loan that repaid a PLUS loan incurred on behalf of an eligible victim.

Implementation

The Secretary is required to develop implementing regulations and application procedures for these discharges and cancellations within 90 days after the date of enactment of the Third Higher Education Extension Act (December 29, 2006). The Department is also developing a separate application form for these benefits.

Guaranty Agency Account Maintenance Fees

Public Law 109-292 made a technical modification to the language of §458(b) of the HEA relating to the calculation of account maintenance fees paid by the Secretary to guaranty agencies in the FFELP. This change does not have any practical effect on those payments.

TITLE V – Developing Institutions

Hispanic-Serving Institutions (HSI) Program

Effective September 30, 2006, section 502(a) of the HEA was amended by eliminating the requirement in the HSI Program for an institution applying for a grant to provide assurances that not less than 50 percent of the institution's Hispanic students were low-income. In addition, section 502(b) of the HEA was amended to eliminate the provision that required institutions that received a five-year development grant to wait for two years after expiration of that grant before applying for another five-year development grant.

We thank you in advance for your work to implement and comply with this guidance. If you have any questions please contact the following individuals: for questions relating to the ELT provisions, please contact Pamela Moran at (202) 502-7732 or Pamela.Moran@ed.gov; for questions relating to the September 11 discharge and cancellation provisions, please contact Brian Smith at (202) 502-7551 or Brian.Smith@ed.gov or Gail McLarnon at (202) 219-7048 or Gail.McLarnon@ed.gov; and for questions relating to the Hispanic-Serving Institutions Program provisions, please contact Sophia McArdle at (202) 219-7078 or Sophia.McArdle@ed.gov.

Sincerely,



James F. Manning
Delegated the Authority of the Assistant Secretary